IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 12171 of 2007(Y)

PETITIONER:

P.M.JAMEELA, AGED 46 YERARS, D/O.HAJI
P.MAMMU, BIJAS, 3/194, PULICKAL LINE,
WEST NADAKKAVU, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

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1. KOZHIKODE CORPORATION REPRESENTED BY
ITS SECRETARY, KOZHIKODE.

2. THE SECRETARY,KOZHIKODE CORPORATION,
KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,PUBLIC WORKS DEPARTMENT,
TRIVANDRUM.

R1 & R2 BY ADV. SRI. C.M.SURESH BABU, SC, KZKD. CORPN.
R3 BY ADV. SRI. K.J. MOHAMMED ANZAR, SR. GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 12171 OF 2007

Dated this the 13th day of September, 2007

JUDGMENT

Under challenge in this Writ Petition is Ext.P2 order of the 1st respondent-Corporation by which the Corporation has rejected the petitioner's application for permit for the construction of a residential building on the reason that the site takes in an area marked as per the DTP Scheme for Civil Station area Scheme No.3 and that there is a proposal for road widening to the extent of 7 meters in front of the petitioner's plot.

2. Heard Sri.A.V.M Salahuddeen, counsel for the petitioner and Sri.C.M. Suresh Babu, Standing Counsel for the Corporation who made submissions on the basis of the pleadings raised. Mr.Salahuddeen would submit that no valid scheme is presently in currency and that in any view due to long passage of time, the scheme has become oppressive. My attention was drawn by Mr.Salahuddeen to various judgments of this court such as **Padmini V. State of Kerala** [1999 (3) KLT 465], **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222] and **Francis v. Chalakudy Municipality** [1999 (3) KLT 560].

3. Sri.C.M. Suresh Babu, Standing Counsel however would justify

the impugned order on the basis of the contentions raised in the detailed counter affidavit filed. According to him, the petitioner will be taking a serious risk by constructing building on a plot which at any time can be acquired for genuine public purpose of road widening in implementation of the scheme.

Having considered the rival submissions addressed at the Bar in the light of the principles laid down by the decisions cited before me by Mr.Salahuddeen, I feel that the Corporation is not justified in insisting that the petitioner shall not deal with his property like other absolute owners just on the reason that as per the DTP scheme a portion of the plot is included in the area earmarked for road widening. Obviously, no notification under Section 4(1) of the Land Acquisition Act has been promulgated so far. Till such time as the notification is promulgated, it cannot be said that there is a genuine proposal for acquiring any portion of the petitioner's plot. Following the principles laid down in the decisions, particularly, **Raju Jethmalani**'s case(supra), I am inclined to grant relief to the petitioner. Accordingly, I quash Ext.P2 and direct the petitioner to file an affidavit before the Corporation undertaking that in case the Corporation facilitates the promulgation of a notification under Section 4(1) of the Land Acquisition Act for acquisition of any portion of his property for road widening is contemplated under the DTP Scheme

within a period of 9 months from the date of issuance of the permit, he will remove the constructions put up by him to the extent they are situated on the area required for road widening and that he will not claim any compensation for such constructions. Once such an affidavit is received by the Corporation, the Corporation will reconsider the petitioner's application for permit and if the plan is found to be otherwise in order, pass appropriate orders facilitating grant of permit. In other words, the existence of the DTP Scheme made mention of in the impugned order shall not be a ground for rejecting the plan. It is needless to mention that even after the expiry of the 9 months' period mentioned herein, it will also be open to the Corporation to acquire the petitioner's property for a genuine public purpose in which case the petitioner will be entitled for compensation under the Land Acquisition Act. Orders on the permit application as directed herein above shall be passed by the Corporation within one month of the petitioner filing the affidavit.

PIUS C. KURIAKOSE, JUDGE

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